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DOUGLAS A. PEDLEY

v.

MAJLIS UGAMA ISLAM PULAU PINANG & ANOR.

HIGH COURT MALAYA, PENANG

WAN ADNAN J

b

[ORIGINATING SUMMONS NO. 31-717-87]

13 APRIL 1990

FAMILY LAW: *Marriage by Catholic rites - Conversion of one party to Islam - Effect on marriage and other party - Personal and civil laws - Section 51(1) Law Reform (Marriage and Divorce) Act 1976.*

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CIVIL PROCEDURE: *Declaration - Discretion of Court - Indirect and insubstantial claim - Legal right - Benefit.*

The plaintiff and his wife were Roman Catholics who married on 12 February 1966. On 12 January 1987, the plaintiff's wife converted to Islam without the plaintiff's knowledge and consent. The plaintiff sought a declaration that his wife's conversion had not determined their marriage which had been carried out according to Catholic rites.

*d***Held:**

[1] In respect to this marriage, the personal laws of the plaintiff and the civil laws of the country are applicable to the plaintiff.

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[2] Under s. 51(1) of the Law Reform (Marriage and Divorce) Act 1976, a non-Muslim marriage is not dissolved upon one of the parties converting to Islam; it only provides a ground for the other party who has not converted to petition for divorce.

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[3] The power of the Court to make a declaratory judgment is discretionary and the Court will not do so when the question raised is purely academic. Although the remedy by way of declaration is wide and flexible yet it will not be granted to a plaintiff whose claim is too indirect and insubstantial and which would not give him 'relief' in any real sense. On the facts of this case the plaintiff will not benefit in any way by the declaration sought.

[Plaintiff's application dismissed.]

*g***Cases referred to:**

Eeswari Visuvalingam v. Government of Malaysia [1990] 1 CLJ (Rep) 111

Howard v. Pickford Tool Co. [1951] 1 KB 417

Thorne Rural District Council v. Bunting [1971] 1 All ER 439

Legislation referred to:

Law Reform (Marriage & Divorce) Act 1976, s. 51(1)

For the appellant/plaintiff - Karpal Singh; M/s. Karpal Singh & Co.

For the respondent/2nd defendant - Hashim bin Dato' Hj. Yusoff (Penang Legal Adviser)

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For the 1st defendant - Thevendran; M/s. Daud, Thevendran & Partners

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JUDGMENT

Wan Adnan J:

By this application the plaintiff is asking for the following declarations:

1. That the conversion of the plaintiff's wife Olwen Patricia Pedley nee Newman @ Mahani Newman bte. Abdullah to Islam on 12 January 1987 has not determined his marriage to her according to Catholic rites on 12 February 1966;
2. That they continued living together the plaintiff and his wife, Olwen Patricia Pedley nee Newman @ Mahani Newman bte. Abdullah is lawful;

The plaintiff married one Olwen Patricia Pedley nee Newman at the Cathedral of the Assumption, Farquahar Street, Penang on 12 February 1966. Both of them were practising Roman Catholics. On 12 January 1987 the said Olwen Patricia Pedley embraced the religion of Islam without the plaintiff's knowledge and consent at the Jabatan Hal Ehwal Ugama, Lebuh Downing, Pulau Pinang and assumed the name of Mahani Newman bte Abdullah.

On 10 April 1987 the Kadi Besar of Negeri Pulau Pinang, Haji Fathil bin Haji Abdullah wrote to the plaintiff as follows:

Dimaklumkan berhubung dengan perkara yang di atas, bahawa isteri tuan yang bernama Oliven @ Olwen Patricia Newman K/P. No. 2542313 dulu alamat 4090 Jalan Pantai, Butterworth Pulau Pinang telah memeluk Agama Islam pada 12 Januari 1987 bil. No. Negeri 8/87, Daerah 2/87.

2. Oleh itu tuan adalah dinasihatkan supaya tuan turut sama memeluk Agama Islam dalam masa lebih kurang 90 hari dari tarikh isteri tuan memeluk Islam. Jika tidak tuan dianggap terputus hubungan di antara tuan dengan isteri tuan sebagai suami isteri yang sah mengikut undang-undang Islam.

At the hearing, Counsel for the plaintiff withdrew the application for the second declaration as the wife was no longer living with the plaintiff.

The Supreme Court in the case of *Eeswari Visuvalingam v. Government of Malaysia* [1990] 1 CLJ (Rep) 111 had stated as follows:

In *Farooq Leivers v. Adelaide Bridget Mary* PLD 1958 (WP) Lahore 431 the plaintiff, a non-Muslim converted to Islam, asked the defendant to study the Islamic religion and embrace Islam but she refused. The plaintiff, realizing that there was no chance of a reconciliation, divorced the defendant by pronouncing the Islamic formula of talak. The learned Judge there realized that as the plaintiff had embraced Islam he at once became subject to Muslim personal and religious laws. But the more difficult question in such cases was what was the effect of the conversion on other persons who have some rights vested in them before the conversion. In that case the learned judge held that:

On the one hand under the Muslim Law, a Christian husband, on his conversion to Islam, is authorized to give talak to his Christian wife by pronouncing the formula of talak, but on the other hand, the Courts in Pakistan cannot recognize such a talak in view of the provisions of the Divorce Act 1869 and other existing laws. In such a conflict of the personal law of the parties to the suit, there does not appear to be any justification to prefer the personal law of the plaintiff to the personal law of the respondent.

In our case here, the law applicable to the appellant had always been her own personal laws, and the civil laws of the country. See also *Che Omar bin Che Soh v. PP* [1988] 2 MLJ 55.

- a** Applying the above principles the personal laws of the plaintiff and the civil laws of the country are applicable to the plaintiff in respect of the marriage in question.

Section 51(1) of the Law Reform (Marriage & Divorce) Act 1976 provides as follows:

51. Dissolution on ground of conversion to Islam:

- b** (1) Where one party to a marriage has converted to Islam, the other party who has not so converted may petition for divorce:

It is therefore clear that under the law a non-Muslim marriage is not dissolved upon one of the parties converting to Islam. It only provides a ground for the other party who has not converted to petition for divorce.

- c** The power of the Court to make a declaratory judgment is discretionary. The Court will not make a declaratory judgment when the question raised is purely academic. The Court should not be required "to answer academic questions" *Howard v. Pickford Tool Co.* [1951] 1 KB 417. Although the remedy by way of declaration is wide and flexible yet it will not be granted to a plaintiff whose claim is too indirect and insubstantial and would not give him 'relief' in any real sense i.e. relieve him from any liability or disadvantage or difficulty. *Thorne Rural District Council v. Bunting* [1971] 1 All ER 439.

- d** I find that the declaration prayed for is purely academic. The plaintiff is not going to benefit in any way from the declaration. He is not asking for any consequential relief. He is only asking for a declaration of a mere legal right. Counsel for the plaintiff says that the Court ought to make the declaration prayed for in view of the letter dated 10 April 1987 written by the Kadi Besar to the plaintiff as stated above to the effect that if he did not become a Muslim following his wife, his marriage to the wife would be dissolved in accordance with the Islamic law. In any view the assertion of the said Kadi Besar did not and will not affect the plaintiff's legal position in the eyes of his own personal laws and the civil laws of the country. He will therefore not benefit in any way by the declaration prayed for.
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I therefore dismissed the application. In the circumstances of the case I felt that I should not order costs against the plaintiff. I therefore ordered that each party bear his own costs.

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Also found at [1990] 2 CLJ 391

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